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Remarks

Claims 1-69 are pending in the application. Claims 70-77 previously were withdrawn from consideration, and are hereby canceled. Independent Claims 1, 18, 34, 48, and 64, and dependent Claims 12-15, 28, 43-46, and 58 have been amended. Dependent Claims 11, 42, and 65 are hereby canceled.

The Office Action states that Claims 17, 33, 47 and 63 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1, 8, 34 and 39 stand rejected under 35 USC 102(e) as being anticipated by U.S. Pat. No. 6,712,342 to **Bosko**. Claims 64 and 69 stand rejected under 35 USC 102(b) as being anticipated by U.S. Pat. No. 5,022,565 to **Sturman et al.** Claims 2-7, 9, 10, 35-38, 40 and 41 stand rejected under 35 USC 103(a) as being unpatentable over **Bosko**. Claims 65-68 stand rejected under 35 USC 103(a) as being unpatentable over **Sturman**. Claims 11-15, 18-31, 42-46 and 48-61 stand rejected under 35 USC 103(a) as being unpatentable over **Bosko** in view of **Sturman**. Claim 16 stands rejected under 35 USC 103(a) as being unpatentable over **Bosko** in view of U.S. Patent. Application Publication 2001/0013522 by **McCann et al.** Claims 32 and 62 stand rejected under 35 USC 103(a) as being unpatentable over **Bosko** as modified by **Sturman**, and further in view of **McCann**. The Applicant respectfully traverses the rejections of Claims 1-10, 12-41, 43-64, and 66-69 as discussed below.

1. Claims 1, 8, 34 and 39 are Novel Over Bosko

Claims 1, 8, 34 and 39 stand rejected under 35 USC 102(e) as being anticipated by **Bosko**. In order for a claim to be anticipated by a reference, the reference must disclose every element recited in the claim.

Independent Claims 1 and 34 have been amended. As amended, independent Claim 1 recites "a supply of pressurized gaseous carbon dioxide comprising a high pressure gas cylinder having a neck with a throat, and a plug inserted and retained within the throat and having a

piercable membrane connected thereto.” Accordingly, Claim 1 and dependent Claims 8 each recite a “a high pressure gas cylinder” that includes “a neck with a throat” and “a plug inserted and retained within the throat and having a piercable membrane connected thereto.” As amended, independent Claim 34 similarly recites “a supply of pressurized gaseous carbon dioxide comprising a high pressure gas cylinder having a neck with a throat, and a plug inserted and retained within the throat and having a piercable membrane connected thereto.” Accordingly, Claim 34 and dependent Claim 39 each recite a “a high pressure gas cylinder” that includes “a neck with a throat” and “a plug inserted and retained within the throat and having a piercable membrane connected thereto.”

Bosko does not describe a high pressure gas cylinder of any kind, and specifically does not describe a high pressure gas cylinder having all the features recited in any one of Claims 1, 8, 34 and 39. To the contrary, **Bosko** only briefly mentions a “carbonation supply” or “CO₂ source” (ref. numeral 20) that “may comprise a tank of CO₂ gas.” A person of ordinary skill in the art would understand such a “tank” to be a conventional CO₂ bottle. Such conventional CO₂ bottles do not include “a plug inserted and retained within the throat and having a piercable membrane connected thereto” as required by each of the subject claims. Accordingly, at least for this reason, **Bosko** does not disclose every element recited in any one of Claims 1, 8, 34 and 39, and the rejection of these claims under 35 USC 102(e) should be withdrawn.

2. Claims 64 and 69 are Novel Over Sturman

Claims 64 and 69 stand rejected under 35 USC 102(b) as being anticipated by **Sturman**. In order for a claim to be anticipated by a reference, the reference must disclose every element recited in the claim.

Independent Claim 64 has been amended. As amended, independent Claim 64 recites a “high pressure gas cylinder” having “a neck having a throat,” a “plug disposed within and retained within the throat,” and a “piercable membrane connected to the plug and disposed within the throat.” Claim 64 further states that “the plug and membrane combine to seal a pressurized fluid within the cylinder at internal pressures up to at least about 1800 psig.” **Sturman** does not

describe such a gas cylinder. To the contrary, **Sturman** describes a soda drink dispenser that includes “a conventional small carbon dioxide container 66.” As described in **Sturman**, such a “conventional” carbon dioxide container contains carbon dioxide at a relatively low internal pressure of about 1000 psi. (*See* Col. 6, lines 42-44) In addition, as shown in Figs. 2 and 5 of **Sturman**, the neck of such a conventional carbon dioxide container is sealed by a metal cap that is externally mounted on the end of the neck. Thus, **Sturman** does not disclose a “high pressure gas cylinder,” a “plug disposed within and retained within the throat,” or a “piercable membrane connected to the plug and disposed within the throat” as required by both Claims 64 and 69. Accordingly, at least for this reason, **Sturman** does not disclose every element recited in any one of Claims 64 or 69, and the rejection of these claims under 35 USC 102(b) should be withdrawn.

**3. Claims 2-7, 9, 10-16, 18-32, 35-38, 40, 41, 43-46, 48-62, and 66-68
are Patentable Over the Cited References**

Claims 2-7, 9, 10-16, 18-32, 35-38, 40, 41, 43-46, 48-62, and 66-68 stand rejected under 35 USC 103(a) as being unpatentable over one or more cited references. Claims 11, 42 and 65 have been canceled. The Examiner has the burden to establish a *prima facie* case of obviousness when rejecting claims under 35 U.S.C. §103(a). *See* MPEP 2142. To establish a *prima facie* case of obviousness, three basic criteria must be met. *See* MPEP 2143. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *Id.* (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

a. Claims 2-7, 9, 10, 35-38, 40 and 41 are Patentable Over Bosko

Claims 2-7, 9, 10, 35-38, 40 and 41 stand rejected under 35 USC 103(a) as being unpatentable over **Bosko**. The Office Action states that though **Bosko** “lacks the various

pressures, percentages of carbon dioxide, and temperatures” recited in the subject claims, it would have been obvious to one of ordinary skill in the art “to optimize the pressures and temperatures in order to quickly and efficiently carbonate the water.” As discussed above regarding the rejection of independent Claims 1 and 34 under 35 USC 102(e), **Bosko** does not describe a high pressure gas cylinder of any kind, and specifically does not describe a high pressure gas cylinder having all the features recited in any one of Claims 1 and 34. Accordingly, **Bosko** also does not disclose every element recited in any one of dependent Claims 2-7, 9, 10, 35-38, 40 and 41. At least for this reason, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claims 2-7, 9, 10, 35-38, 40 and 41 under 35 USC 103(a) should be withdrawn.

b. Claims 66-68 are Patentable Over Sturman

Claims 65-68 stand rejected under 35 USC 103(a) as being unpatentable over **Sturman**. Claim 66 has been canceled. The Office Action states that though **Sturman** fails to disclose “the pressure limits, capacity and material to make the glass cylinder,” it would have been obvious to one of ordinary skill in the art “to provide the materials, capacity and pressure as claimed as this would clearly be determined by the desired use of the container and the desired safety precautions.” As discussed above regarding the rejection of independent Claim 64, **Sturman** does not disclose a “high pressure gas cylinder,” a “plug disposed within and retained within the throat,” or a “piercable membrane connected to the plug and disposed within the throat” as required by independent Claims 64. For the same reason, **Sturman** also does not disclose every element recited in any one of dependent Claims 66-68. At least because the reference does not disclose all of the limitations of any one of Claims 66-68, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claims 66-68 under 35 USC 103(a) should be withdrawn.

In addition, the Office Action identifies no teaching or suggestion in the reference for the asserted modification to **Sturman**. Indeed, **Sturman** clearly and unambiguously describes a “conventional carbon dioxide container” that includes none of the features specifically recited in the subject claims. In rejecting a claim under 35 USC 103(a), the prior art reference must teach

or suggest all the claim limitations. At least for this reason, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claims 66-68 under 35 USC 103(a) should be withdrawn.

Dependent Claim 68 recites a high pressure gas cylinder that is "constructed of aluminum." In contrast, a person of ordinary skill in the art would understand that the "conventional carbon dioxide container" of **Sturman** is constructed of steel. The Office Action identifies no specific teaching or suggestion in the prior art to modify the conventional low-pressure container of **Sturman** to be constructed of a lower strength material and to be capable of withstanding higher pressures of at least 1800 psi. In rejecting a claim under 35 USC 103(a), (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) there must be a reasonable expectation of success; and (3) the teaching or suggestion to modify the reference and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. At least for this reason, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claim 68 under 35 USC 103(a) should be withdrawn.

c. Claims 12-15, 18-31, 43-46 and 48-61 are Patentable Over Bosko in View of Sturman

Claims 11-15, 18-31, 42-46 and 48-61 stand rejected under 35 USC 103(a) as being unpatentable over **Bosko** in view of **Sturman**. Claims 11 and 42 have been canceled. As discussed above regarding independent Claims 1 and 34, **Bosko** does not describe a high pressure gas cylinder having "a neck with a throat," or a "plug inserted and retained within the throat and having a piercable membrane connected thereto." **Sturman** also fails to disclose such a plug and membrane. Accordingly, neither of the cited references discloses every limitation of any one of dependent claims 12-15 and 43-46. Like independent claims 1 and 34, amended independent Claims 18 and 48 each recite a "plug inserted within and retained within the throat," and a "piercable membrane connected to the plug and sealing the throat" or a "piercable membrane connected to the plug and disposed within the throat." Accordingly, for the same reasons stated above with respect to Claims 1 and 34, the combination of **Bosko** and **Sturman** fails to disclose every limitation recited in any one of independent Claims 18 and 48 and dependent Claims 19-31

and 49-61. Accordingly, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claims 12-15, 18-31, 43-46 and 48-61 under 35 USC 103(a) should be withdrawn. In addition, the Office Action identifies no teaching or suggestion in the cited references to modify the high-volume pre-mix beverage dispensing system of **Bosko** to include a conventional low pressure carbon dioxide cartridge as described in **Sturman**, and to further modify the gas cartridge of **Sturman** to include all of the limitations of the rejected claims. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. At least for this reason, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claims 12-15, 18-31, 43-46 and 48-61 under 35 USC 103(a) should be withdrawn.

d. Claim 16 is Patentable Over Bosko in View of McCann

Dependent Claim 16 stands rejected under 35 USC 103(a) as being unpatentable over **Bosko** in view of U.S. Patent. Application Publication 2001/0013522 by **McCann** et al. The Office Action states that **McCann** “teaches a pneumatic pump 110” as recited in Claim 16, and that it “would have been obvious to provide the pump as taught by **McCann** et al. on the device of **Bosko** in order to provide a motive force to the water.” The “non-carbonated water tank 110” of **McCann** is not “pneumatic pump powered by pressurized carbon dioxide” as specifically recited in Claim 16. Thus, the combination of **Bosko** and **McCann** fails to disclose every limitation recited in dependent Claim 16. Furthermore, Claim 16 depends from independent Claim 1. As discussed above, **Bosko** does not describe a high pressure gas cylinder having “a neck with a throat,” or a “plug inserted and retained within the throat and having a piercable membrane connected thereto” as recited in Claim 1 and in dependent Claim 16. **McCann** also fails to disclose a high pressure gas cylinder having every limitation required by Claim 1. At least for this reason, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claim 16 under 35 USC 103(a) should be withdrawn.

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*e. Claims 32 and 62 are Patentable Over Bosko in View of Sturman,
and Further in View of McCann*

Claims 32 and 62 stand rejected under 35 USC 103(a) as being unpatentable over **Bosko** as modified by **Sturman**, and further in view of **McCann**. Like their respective base claims 18 and 48, claims 32 and 62 each recite a high pressure gas cylinder that includes a “throat,” a “plug inserted within and retained within the throat,” and a “piercable membrane connected to the plug and sealing the throat” or a “piercable membrane connected to the plug and disposed within the throat.” As discussed above, neither **Bosko** nor **Sturman** discloses such a gas cylinder. **McCann** also fails to disclose such a cylinder. Accordingly, the combined references do not disclose all the limitations of either Claim 32 or 62. At least for this reason, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claims 32 and 62 under 35 USC 103(a) should be withdrawn.

In addition, as discussed above regarding Claim 16, **McCann** does not describe a “pneumatic pump powered by pressurized carbon dioxide” as recited in Claim 16 and recited in Claims 32 and 62. Accordingly, the combined references do not disclose all the limitations of either Claim 32 or 62. At least for this reason, the Office Action does not set forth a *prima facie* case of obviousness, and the rejection of Claims 32 and 62 under 35 USC 103(a) should be withdrawn.

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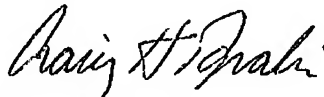
Conclusion

The Office Action states that Claims 17, 33, 47 and 63 include allowable subject matter. As discussed in detail above, the Applicant believes that claims 1-10, 12-16, 18-32, 34-41, 43-46, 48-62, 64 and 66-69 also are in condition for immediate allowance, and such action is respectfully requested. If any issue remains unresolved, however, the Applicant's attorney welcomes a telephone conference to resolve any such matters.

Respectfully submitted,

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Date: 9/27/2006

File No.: U43142 1010.1